PROVINCE OF NEW BRUNSWICK

REPORT

of the

MOTOR CARRIER BOARD

FOR THE YEAR ENDING

DECEMBER 31st, 1955

Printed by Order of the Legislature

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101-07106/

MOTOR CARRIER BOARD

CHARLES R. ALLEN, Chairman
Hartland, N. B.

PROSPER GIROUARD ..... Kent Boom, N. B.

W. GRANT SMITH, Q.C. ..... Saint John, N. B.

G. EARLE LOGAN, Q.C., Secretary ..... Saint John, N. B.

MOTOR CARRIER BOARD

Saint John, N. B.,
January 3, 1956.

HONOURABLE HUGH JOHN FLEMMING,
Minister of Public Works,
Fredericton, N. B.

Dear Sir:

I have the honour to submit herewith the report of The Motor Carrier Board for the year ending December 31st, 1955.

This report shows public motor bus applications dealt with under The Motor Carrier Act, and the Board's rulings thereon. There is appended a statistical summary of the returns made in 1955 by licensed public motor buses.

During 1954 the Board held twelve sittings.

No statement of receipts and expenditures is included in the report as the fees payable by motor carriers are remitted directly to your Department, and the members and secretary of the Board receive no remuneration in addition to that paid them respectively as members and secretary of the Board of Commissioners of Public Utilities.

Respectfully submitted,

CHARLES R. ALLEN,
Chairman.

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February 17, 1955.

IN THE MATTER of the application of North Shore Transport Limited for public motor bus licenses over the following routes:

(a) The present franchise of the North Shore Transport Limited permits its buses to travel to and from the Town of Bathurst over that section of highway No. 11 running in a northeasterly direction from Bathurst via Tracadie to Newcastle and being between the Town of Bathurst and the intersection of the Carron Point Road, so called. The purpose of the present application is for authority to extend the bus service from the point at the intersection of the No. 11 highway and the Carron Point Road to the beach and returning by way of a second road which intersects the said No. 11 highway to Tracadie at a point approximately 1¼ miles in an easterly direction from the point at which Carron Point Road intersects the No. 11 highway, returning by way of highway No. 11 to Bathurst. The 1¼ mile section of No. 11 highway concerned in this application is now served twice daily in both directions by buses operated by Gloucester Motor Coach Lines in its direct run from Caraquet to Bathurst and return. The description of the route concerned is taken from the map being the base map of the metropolitan area of Greater Bathurst prepared by F. K. Rushton, a copy of which is filed with the Secretary of the Motor Carrier Board.

(b) The present franchise of North Shore Transport Limited permits its buses to travel from and to the Town of Bathurst over that section of No. 11 highway extending from the Town of Bathurst in a northwesterly direction to the point where the said No. 11 highway is intersected by the road leading to the Vallee Lourdes Sanitorium and return over the same route. The present application requests authority to move motor transport busses for passengers from the point where the No. 11 highway meets the Vallee Lourdes Sanitorium Road along the said No. 11 highway to the point where the road leading to Youghall Beach Road, so called, intersects the said No. 11 highway, thence proceeding along Youghall Beach Road to the beach and return over the same route. That portion of No. 11 highway lying between the point where the Vallee Lourdes Sanitorium Road intersects the No. 11 highway and the point where the Youghall Beach Road intersects the said No. 11 highway is a distance

of approximately one mile. This one mile section forms a part of the route franchised to S. M. T. (Eastern) Limited and is traversed each day by the buses operated by that company on its run from Campbellton to Moncton and return. There are no other local buses operated over this one mile stretch of highway.

Appearances: John J. Hogan for the applicant,
L. E. Mallette of S. M. T. (Eastern) Ltd.

It appearing that notices of the applications were duly served and advertised and that public convenience would be served, the same were granted.

IN THE MATTER of the Chaleur Autobus Limited.

Order-in-Council

"January 13, 1955 55-60

1. Under section 11 of The Motor Carrier Act, the Lieutenant-Governor in Council authorizes the Chaleur Bay Autobus Limited to use the highway between Matapedia and Campbellton in operating a bus service between the New Carlisle, Quebec and Campbellton, without obtaining a license from The Motor Carrier Board, and without payment of a seat-mile tax under the Motor Carrier Regulations.

2. The authority hereby granted may be revoked at any time without previous notice.

3. The authority hereby granted shall have effect only during that period in which no ferry is in operation between Matapedia and Campbellton.

4. Nothing herein contained shall be construed so as to give the Chaleur Bay Autobus Limited the right to pick up and let down passengers in the Province between Campbellton and Matapedia.

(Sgd.) D. L. MacLAREN.

This is to certify that the aforegoing is a true copy of an Order of the Lieutenant-Governor in Council of the Province of New Brunswick made on the 13th day of January 1955.

(Sgd.) JOHN T. GRAY,

Clerk of the Executive Council.

March 17, 1955.

The following letter received from Charles Y. Swanton was considered:

"Saint John, N. B.,
March 9th, 1955.

Mr. G. Earle Logan, Q.C.,
Sec'y, The Motor Carrier Board,
Saint John, N. B.

Dear Sir: **Re SEASIDE BUS SERVICE**

As you probably know, Champlain Heights Limited some months ago acquired a large tract of land near Silver Falls, for the purpose of a housing development. Community Enterprises Limited, a large Montreal construction firm, is presently engaged in erecting private homes on the site, and have now completed ten such homes, and are planning to start fifty more houses within the next few weeks, and further lots of fifty in each six month period, until a total of over four hundred houses is reached.

To date, we have been successful in having water and sewerage installed, along with telephone and hydro service. The Post Office Department has been contacted, and we are assured that adequate Post Office facilities will be provided. The Parish and Provincial Highway Departments have assured us that the streets and roads will be built as our construction progresses. The only matter that is causing us some concern is the present lack of suitable bus service. The President of Champlain Heights Limited, who is also the resident Superintendent of Community Enterprises Limited, advises that the buses now on this route are rickety, dirty vehicles, with torn seats, dirty cracked windshields, and generally disreputable, and not in keeping with the service expected for a modern first class sub-division. I am also advised that the number of trips per day are fewer than one would expect to serve a sub-division of the type and proposed size of Champlain Heights.

May we be advised, please, as to whether or not we can expect any improvement in the service and vehicles provided by the bus operator of this route.

Yours very truly,

(Sgd.) CHARLES Y. SWANTON."

On hearing Mr. Swanton, and Councillor Ian P. Mackin for the Seaside Motor Service the matter was stood over until the April sitting.

The application of S. M. T. (Eastern) Limited for permission to transfer part of Route 14 (now served by the Company) to Donald MacFarlane of Moncton, N. B., was approved, upon the required bond and insurance policy being filed. The part transferred is as follows:

> Gunningsville-Alma route from a point 5.5 miles northeast of the Moncton-Gunningsville highway bridge.

IN THE MATTER of the application of North Shore Transport Ltd., for a license to operate a public motor bus over the following route:

Town of Bathurst — ¼ mile from junction of No. 11 and No. 8 to East Bathurst through St. Marys to a point on No. 8 approximately two miles from starting point and return on No. 8 to Bathurst, N. B.

Appearances: A. L. Harris for the applicant.
No one contra.

It appearing that notice of hearing had been duly served and advertised and public convenience would be served by granting the application, the same was granted.

Permission was granted the Est. George Adams to discontinue his motor bus service due to condition of the highway.

May 19, 1955.

The application of Alice Johnson to transfer public motor bus license to Pius R. Finnan was approved, subject to filing insurance policy, bond and letter from the Provincial Secretary-Treasurer that all fees had been paid.

The application of Ovila Leger to transfer public motor bus license to Eric Richard was approved subject to filing of insurance policy, bond and letter from Provincial Secretary-Treasurer that all fees had been paid.

September 22, 1955.

IN THE MATTER of application of Mrs. Mathilda Doiron for a Public Motor Bus license over the following route in Gloucester County, namely:

From Rang St. Saveur to Bathurst via Beaubois Veniot P. O. and Allardville and return, a distance of 25 miles.

Appearances: George E. McInerney, Q.C., M.L.A., for the applicant.

E. Neil McKelvey for S. M. T. (Eastern) Ltd. — contra.

After hearing Counsel, the application was granted, the time card being as amended as follows:

Leave St. Saveur — 8:00 a.m. and 1:00 p.m.

Leave Bathurst — 11:00 a.m. and 6:40 p.m.

The applicant to file schedule of rates and insurance policies.

IN THE MATTER of the application of S. M. T. (Eastern) Ltd. for an order allowing the discontinuance of its Public Motor Bus service between Moncton, N. B. and Riverview, Gunningsville and Lower Coverdale, Albert Co.

Appearances: E. Neil McKelvey and L. M. Machum for the Applicant.

Leonard J. Jones, jr., for the Municipality of Albert.

R. L. Miller for certain residents in the area.

Also present in opposition were —

J. H. McClure, Warden of Albert County
George C. Blight
Edgar Mitton
Richard Miller, Moncton, on behalf of the Community of Riverview, — representing the Riverview Community Association and Riverview Ladies Association — Women's Institute.

Mrs. Robert Dell, Riverview Women's Association
Mrs. Harry Miller, Women's Institute
David McKay, Riverview Community Association
Rev. Logan McLellan, Home & School Associations of Gunningsville, Bridgedale, Lower Coverdale.
D. R. Kelly, Coverdale Community Association.

The hearing commenced at 10:30 a.m. and adjourned at 12:00 noon resuming at 2:30 p.m. until 5:00 p.m.

Several witnesses were heard both in support of and against the application.

Counsel are to file written briefs on or before October 26, 1955.

October 13, 1955.

The application of Edmundston Transport Lines for permission to transfer its Public Motor Bus license to Rosaire Bosse to St. Francis, Madawaska County, over the following route was heard:

(a) From the Town of Edmundston to the Boundary on the inter-provincial border of the Province of New Brunswick and Quebec.

(b) From Caron Brook to Connors, inclusively, on Rout No. 20A.

Appearances: P. E. Pelletier for the Applicant.
No one contra.

The application was granted subject to time card, schedule of rates, public liability, property damage and passenger liability and property damage insurance policies.

IN THE MATTER of the application of Romeo T. Nadeau for a Public Motor Bus license over the following route, namely:

From Baker Brook (i. e. Province of Quebec Boundary P. O.) to Edmundston and St. Clair, in the County of Madawaska, N. B.

Appearances: No one for the Applicant.

P. E. Pelletier for Rosaire Bosse, a licensee over this route — contra.

The Secretary explained that the Applicant had advertised notice of application in the Royal Gazette, but had filed no application, and he had been written that the matter would be heard at the present sitting and requested him to file, but he had not replied to the letter.

Mr. Pelletier said that the route in question was in direct conflict with that now under license to Mr. Bosse. The application was dismissed.

November 17, 1955.

IN THE MATTER of the application of S. M. T. (Eastern) Ltd., for permission to discontinue the public motor bus service between Moncton and the Gunningsville district.

Mr. E. Neil McKelvey appeared for the S. M. T. (Eastern) Ltd., and said that efforts were being made to furnish service over the route by the Grey Bus Line on a trial basis.

After considerable discussion the matter was held over for further consideration.

IN THE MATTER of the application of Godfrey Bros., to discontinue the motor bus service for the winter months, over the following route: Chatham to Escuminac.

Appearances: None.

Proof of publication and posting of the application having been made and it appearing that no public inconvenience would ensue the application was granted.

December 15, 1955.

At Mr. Donald Hadley's request by telegram his application for a public motor bus license was withdrawn.

The following letter from S. M. T. (Eastern (Ltd., was considered:

"December 1, 1955.

Mr. G. Earle Logan, Secretary,
Motor Carrier Board,
Saint John, N. B.
Dear Mr. Logan:

I have received the notice issued to all Public Motor Truck Operators in the Province of New Brunswick covering Intra-Provincial and Inter-Provincial Truckers which has been sent out by your office.

Our Company, S. M. T. (Eastern) Limited is operating a Freight Trucking Service between the Cities of Saint John and Moncton and between the Cities of Saint John and Fredericton via the River and Broad Roads.

Our Company began operating the above trucking services under a franchise issued by The Motor Carrier Board in the year 1937, and since S. M. T. (Eastern) Ltd., have never requested cancellation of those franchises, we are assuming that it will not be necessary for our Company to apply for new franchises but rather will continue to operate on our franchise issued in 1937 providing that we comply with all the regulations as set out in the new Act which will become effective February 1, 1956.

With this in mind we are enclosing copies of our present freight rates on the above routes and also copies of our bills of lading and freight bills.

Trusting that this meets with your approval.

Yours very truly,

S. M. T. (EASTERN) LIMITED

(Sgd.) G. Carl Bird, Manager."

On motion it was ordered that public motor truck licenses be granted the Company without the necessity of filing an application.

EXEMPT AREAS

Under Section 11 s.s. 2 of The Motor Carrier Act areas contigeous to cities, towns and incorporated villages of New Brunswick but not extending more than twenty miles from the boundaries thereof, are declared exempt districts and the provisions of the Act shall not apply to public motor trucks, except those operated by a licensed motor carrier, operating therein under special permits issued for such area.

IN THE MATTER of the application of Grey Bus Line Company Ltd., for approval of a revised schedule of public motor bus fares.

J. A. Creaghan, Q.C., presented the following Petition:

"THE MOTOR CARRIER BOARD
PROVINCE OF NEW BRUNSWICK

IN THE MATTER of the application of Grey Bus Line Company Ltd., for approval and confirmation for a revised schedule of passenger fares for its suburban services.

To The Motor Carrier Board of the Province of New Brunswick.

The petition of Grey Bus Line Company, Ltd., a duly incorporated Company, having its Head Office in the City of Moncton in the Province of New Brunswick, HUMBLY SHEWETH:—

1. That your petitioner is licensed by The Motor Carrier Board of the Province of New Brunswick to operate as a passenger common carrier for compensation in several areas around the City of Moncton in the County of Westmorland in the Province of New Brunswick, and does so operate.

2. That the tariff of passenger fares presently in effect over the said routes is too low to enable the company to earn a reasonable profit over its whole operation.

3. That your petitioner is faced with steadily increasing maintenance and operation costs.

4. That your petitioner requests permission to revise its existing tariff of passenger fares on its said suburban routes in the following zones as follows:—

Zone 1 Lewisville and Humphrey route — One way fare 10 cents or 5 tickets for 50 cents.

Zone 1 Lewisville-Highland View Route — One way fare 10 cents or 5 tickets for 50 cents.

Zone 1 Moncton to Lakeburn — One way fare 10 cents or 5 tickets for 50 cents.

Zone 1 Moncton to Parkton — One way fare 10 cents or 5 tickets for 50 cents.

In all other respects the existing fare to remain unchanged.

5. That your petitioner requests that the said proposed tariff be permitted to become effective on and from the 20th day of January, 1956.

YOUR PETITIONER therefore HUMBLY PRAYS that the said proposed new tariff of passenger fares be approved by the Board, and your Petitioner as in duty bound may ever pray.

Dated this 13th day of December A. D. 1955.

GREY BUS LINE COMPANY LTD.,

(Sgd.) J. A. Creaghan, Secretary."

The following Order was made:

IN THE MATTER of the application of Grey Bus Line Company Ltd., for approval and confirmation for a revised schedule of passenger fares for its surburban services.

UPON HEARING READ the petition of the above named applicant and UPON HEARING John A. Creaghan, Q.C., Solicitor for the applicant;

IT IS ORDERED that the time and place for the hearing of the said application be set for Wednesday the 18th day of January 1956 at the hour of ten o'clock in the forenoon at the offices of the Board in the Provincial Building (so called) in the City of Saint John.

AND IT IS FURTHER ORDERED that notices of such hearing be posted in all buses operated by the company in its surburban services, and at the office of the company at the City of Moncton not later than the 1st day of January 1956.

AND IT IS FURTHER ORDERED that notices of the said hearing be published in the issues of the Daily Transcript and L'Evangeline newspapers published at the said City of Moncton on the 31st day of December 1955 and the 7th day of January 1956.

AND IT IS FURTHER ORDERED that a schedule of the proposed tariff of passenger fares be filed and kept open for public inspection at the Company's office at Moncton aforesaid during normal business hours commencing on the 1st day of January 1956.

BY THE BOARD,

G. Earle Logan, Secretary.

IN THE MATTER of the application of Norman Smith for transfer of public motor bus license to Jed Blackmore.

Appearances: None.

The Secretary was instructed to advise Alfred L. Harris, Solicitor for Norman Smith, that his application was not in order and directed his attention to the provisions of Section 9 of the Act.

Approval was given of a revised time table of S. M. T. (Eastern) Ltd. — Sussex - Minto.

JUDGMENT

The following judgments were delivered by the Supreme Court of New Brunswick (Appeal Division) on June 4, 1952 and do not appear in the Maritime Province Reports. By permission of the Court Reporter the judgments are now printed in this report.

SUPREME COURT OF NEW BRUNSWICK
(APPEAL DIVISION)

The Queen v. Tweedie et al.

Ex parte S. M. T. (Eastern) Limited

Before Richards C. J., Harrison and Hughes J. J.

Where a bus Company licensed under the Motor Carrier Act, 1937 (N. B.) c 43, for a certain route and service and required by s 11 to carry on its operations only as specified in its license, discontinues part of the service without an order of the Motor Carrier Board and hence contrary to Section 8, the Board may properly order the Company under s 7 (3) to furnish the service on pain of revocation of its license. Its order will not be quashed on **certiorari** where there is some evidence to support it.

Per Harrison J.: Although by Section 21 of the Public Utilities Act, R.S.N.B. 1927, c 127, every licensed motor carrier is deemed a public utility, nonetheless s 24 (1) of this Act does not apply to entitle the Court to make findings of fact upon the evidence before the Board.

Per Hughes J.: On application for discontinuance of service, the Board must consider the interest of both the public and the Company, before coming to a conclusion. It is not to be expected that every mile operated shall be profitable if standing alone.

1952. April 17. R. V. Limerick for the Motor Carrier Board, to show cause.

C. F. Inches, Q.C., and E. N. McKelvey for S. M. T. (Eastern) Limited, contra.

Cur. adv. vult.

HARRISON, J.

At the February Term a Rule Absolute for Certiarari was granted to remove an Order of the Motor Carrier Board into this Court, and a Rule Nisi to quash the said Order, on the application of S. M. T. (Eastern) Limited (hereinafter called the Company).

The Order in question directed the Company to resume its daily public motor bus service from the City of Moncton to the Village of Alma, which service the Company had curtailed without obtaining the permission of the Board.

The Company operates passenger motor buses for hire or compensation over certain highways in New Brunswick. One of the routes served by the Company, under a license from The Motor Carrier Board, is Highway Route No. 14 between the City of Moncton in Westmorland County and the Village of Alma in the County of Albert.

This route was taken over by the Company from another motor bus company with the approval of the Motor Carrier Board and the schedule or time-table of the former company was adopted by the S. M. T. Company. This time-table provided one round trip daily between Moncton and Alma, with two round trips Saturdays, Sundays and holidays. The distance between Moncton and Alma on Route No. 14 is 55 miles; the Village of Albert is situate on the route about 20 miles from Alma and about 35 miles from Moncton.

The Company published a notice of change of the time-table for four days in a Moncton newspaper and, pursuant to the notice, the service between Moncton and Alma was materially curtailed commencing January 2, 1952. On that date daily service was suspended between Albert and Alma; there was a trip from Moncton to Alma on Friday; a round trip between Alma and Moncton on Saturday; and a trip from Alma to Moncton on Sunday. Daily round trips were continued between Moncton and Albert.

The Company, in the evidence before the Board, stated that it was its intention to operate such curtailed service only from January 2nd to some time in April.

The reason given by the Company for the curtailment was that the section of the route from Albert to Alma involved a heavy loss to the company. There was evidence that the operating cost per mile on Route No. 14 was 35.39c and that the turn-of-wheel cost — that is excluding depreciation, administration and advertising expenses — was 28.3c per mile. The average daily revenue per mile for the month of November 1951 between Albert and Alma was 12.2c and for a test week October—October 21-27, 8.5c per mile. The revenue per mile between Albert and Alma in 1951 during the months of January, February, March, April, May, October and November was less than the turn-of-wheel cost. Between November 4 and 24, 1951 the average number of passengers per trip between Albert and Alma for the four scheduled trips was 2.5, 2.9, 3.7 and 2.3 respectively.

By petition addressed to the Board and to the Company, 87 persons, purporting to be residents of Alma and settlements adjacent thereto, complained about the discontinuance of the bus service and prayed that the Board would restore the daily passenger service between Alma and Albert. They gave evidence that there was no other means of public passenger travel from Alma and that there was no medical doctor residing in Alma and that the nearest doctor resided in Riverside — distant about 17 miles, where also the public hospital is located.

It was suggested that the answer to the Company's problem was not curtailment of the service, but, if necessary a raise in the rates, or abandonment of the whole route by the Company so that some other carrier could be granted the license.

The Motor Carrier Act (1937) Cap. 43 of the Acts of Assembly, has the following provisions:

> "11. Except as provided by this Act, no person, firm or company shall operate a public motor bus or public motor truck within the Province without holding a license from the Board authorizing such operations and then only as specified in such license and subject to this Act and the Regulations."

> "8. Except as provided in the next succeeding section no licensed motor carrier shall abandon or discontinue any service comprised within its license without an order of the Board which shall be granted only after a hearing upon such notice as the Board may direct."

Safety Regulations respecting Public Motor Buses approved by Order-in-Council under the provisions of Section 17 of the Motor Carrier Act have the following section:

"17. Adhering to Schedule.

Public motor buses shall not depart from any place of stop in advance of the time shown in the time-table fixed by the Board for any route in question, but where public convenience will be promoted by a change in any such time-table a motor carrier may effect such change after due notice to the public and the prompt filing of advice thereof with the Secretary of the Board. Any change in a time-table so made shall be subject to being approved and fixed by the Board on application made at its next sitting following such change."

It is admitted that no application was made to the Board for the approval of the changed time-table. By the change of time-table the Company discontinued a service between Moncton and Alma and thus violated Section 8 and committed a breach of Regulation 17.

On these grounds the Rule should be discharged.

Section 7 (3) of the Act reads as follows:

"7. (3) On the finding of the Board that a licensed motor carrier is not furnishing proper service over any route covered by its license, such motor carrier shall be given a reasonable time, not less than twenty days, to furnish such service before its license its cancelled or revoked or a license granted to some other motor carrier for such route."

The Order of the Board read as follows:

"The Board finds on the evidence and what was alleged by counsel that the daily public motor bus service from the City of Moncton to the Village of Alma should be resumed. It is ordered that S. M. T. (Eastern) Limited, forthwith furnish a daily public motor bus service between the City of Moncton and the Village of Alma aforesaid and that a time card be filed immediately."

It is objected on behalf of the Company that the Board acted without jurisdiction because they made no finding that the company was not furnishing proper service. The fact, however, that the Board ordered the former service resumed after hearing a complaint that the curtailed service was inadequate is a sufficient finding to that effect.

Again it is objected that the Order did not follow the provisions of Section 7 (3) by fixing a reasonable time within which the Company should furnish the service as ordered under penalty of having its license revoked. The Company have nothing to complain of in this regard unless the license should be revoked before a reasonable time elapses.

The main contention of the Company is that the complaint should have been dealt with under The Public Utilities Act, R. S. N. B. (1927) Cap. 127 by reason of certain provisions in The Motor Carrier Act as follows:

Section 21:

"Every licensed motor carrier shall be deemed a public utility under the Public Utilities Act."

and Section 3 (3):

"Without limiting any powers, duties, authority or jurisdiction conferred or imposed by this Act, all powers, duties, authority and jurisdiction as are vested in the Board of Commissioners of Public Utilities for common carriers are hereby vested in the Board over motor carriers except as otherwise specifically provided in this Act."

It is contended that the complaint should have been dealt with under Section 6 (1) of The Public Utilities Act which provided that upon hearing a complaint that any service is insufficient the Board "shall take into consideration the reasonableness of the rate of return to the Public Utility upon its investment". The Company further contends that Section 24 (1) of The Public Utilities Act applies, which Section reads as follows:

> "Any public utility, or any person aggrieved by any decision or order of the board, may apply to the Supreme Court for the removal thereof by writ of certiorari of any such decision or order, and the said Court shall have power thereupon to decide any question of fact upon the evidence taken before the board, and may confirm, modify, vary or reverse such decision, or order."

Counsel for the Company contended that the two Acts, namely The Motor Carrier Act and The Public Utilities Act, should be read together, and that if Section 24 (1) of The Public Utilities Act applies, then this Court could deal with the finding of the Board, treating its findings like those of a trial judge; see **Toronto Suburban Railway Co., v. Everson,** 54 S. C. R. 395.

Without an express provision to that effect, it is my opinion that Section 24 (1) of The Public Utilities Act would not apply and that therefore, upon certiorari this Court is restricted to an examination of the evidence before the Board to see if there was any evidence upon which the Board could come to the conclusion they reached and whether it acted within its jurisdiction and impartially, and not contrary to natural justice; see **Veterans' Sightseeing & Transportation Co. Ltd. v. Public Utilities Comm.** (1946) 2 D. L. R. 188. No doubt in making its finding the Motor Carrier Board should consider the reasonableness of the return to the Company.

In my opinion there was evidence upon which the Board could make its finding and Order.

It is admitted that the Company received an average return of 28.5c per mile on the entire run between Moncton and Alma, and it was stated in the evidence submitted on behalf of the Company that "we won't cut off any service where we can get what it costs us to turn a wheel." Moreover, the mere fact that a bus or carrier service on part of a route is conducted at a loss will not justify the carrier in discontinuing it where public convenience calls for such service, unless the loss is of such proportions that it places an undue burden on the whole service of the carrier; see **Municipality of Archie et al. v. C .P. R. Co.**, 41 C. R. C. 387; **Victoria, Vancouver and Eastern Ry. & Navigation Co. v. Town of Keremeos et al.**, 43 C. R. C. 236.

There was some evidence upon which the Board could consider that the continuance of the daily service between Moncton and Alma would not place an undue burden on the Company in regard to the entire service on Route No. 14.

In any event, the question of a fair return to the Company would be a matter peculiarly within the jurisdiction of The Motor Carrier Board in its administrative capacity and the finding of the Board would be given the weight attaching to the judgment of a trial judge under Section 24 (1) of the Public Utilities Act. The evidence in my opinion would not have justified a reversal of that finding if the matter were dealt with under said Section 24 (1) but, as I have said this section does not apply.

The Rule Nisi to quash will therefore be discharged.

Fredericton, N. B., (6) W. H. Harrison, J.S.C.

June 4th 1952

Hughes J.

This is an application by way of certiorari to quash an order made by the Motor Carrier Board directing the S. M. T. (Eastern) Limited to restore a certain bus service on the Moncton to Alma route.

The said Company had been operating a bus service extending generally throughout New Brunswick and as part of its system had been operating a bus service between the City of Moncton and Alma in the County of Albert. This service had been operated by the National Transportation Company and had been placed on a schedule and operated accordingly under the Motor Carrier Act, Chap. 43 of the Acts of 1937. The said operation and license were sold to the S. M. T. (Eastern) Limited who took over the said operation. This was approved by the

said Motor Carrier Board. The said S. M. T. (Eastern) Limited thus became entitled to a licence from the Motor Carrier Board to operate the same (Acts of 1939 Chap. 37 Sec. 4).

By the said Motor Carrier Act certain applicable powers are vested in the said Board. Section 4 is as follows:

> "(4) The Board may grant to any person, firm or company a licence to operate or cause to be operated public motor buses or public motor trucks over specified routes and between specified points within the Province."

And Section 11 provides:

> "Except as provided by this Act, no person, firm or company shall operate a public motor bus or public motor truck within the Province without holding a licence from the Board authorizing such operations and then only as specified in such licence and subject to this Act and the regulations."

The S. M. T. (Eastern) Limited does not fall within any exception provided by the Act but does fall within the ordinary rule. It must have a licence from the Board authorizing its operations and it must operate "only as specified in such licence". By Section 8 of said Act it is specifically provided that "no licensed motor carrier shall abandon or discontinue any service comprised within its licence without an order of the Board which shall be granted only after a hearing upon such notice as the Board may direct."

In this case the S. M. T. (Eastern) Limited had taken over the said operation as it had been approved by the Board. It adopted the then existing schedule and that transfer had been approved by the Board. Later it filed its own schedule. It had been operating according to said schedule. This schedule called for a bus to leave Alma at 7 a.m. each day except Sunday, arriving at Moncton at 9:05 a.m. and returning in the afternoon. On Sundays, Saturdays and holidays there was an extra trip. In December last the Company announced that commencing January 2nd, 1952 it would discontinue the service between Alma and Albert except on the weekend trips and thus limited service to the trip from Albert to Moncton; and it did so. It was thus abandoning about twenty miles of road except for weekend service. The Company never applied to the Board for permission to make this change. It assumed it had the right to discontinue part of the service because it claimed that that part of the operation was not paying enough to justify the operation.

Application was made to the Board by a number of the inhabitants of the territory served by S. M. T. (Eastern) Limited that an order be made directing that the said service be restored. The Board after a hearing on the matter directed that said service be restored. The Company by a certiorari proceeding appeals against the said order.

The S. M. T. (Eastern) Limited does not fall within any exception provided for by the Act. It therefore must have a licence from the Board authorizing its operations and it must operate "only as specified in such licence" (Sec. 11). By Section 8 of the said Act it is provided that "no licensed motor carrier shall abandon or discontinue any service comprised within its licence without an order of the Board." In this case the said Company never received an order of the Board to alter the schedule filed with the Board. The Company assumed it had the right to discontinue part of the operation because that portion of the operation was not paying a sufficient amount to meet the operating costs.

The operation which the Company took over from the National Transportation Company was a definite operation running each day between Alma and Moncton on a fixed schedule. It continued this same schedule. Later it filed its own schedule for the route. By its schedule the Company commenced its operation each morning, except Sunday, at 7 a.m. By the new arrangement the Company starts each morning at Albert, except on the weekend trips, and runs to Moncton and returns to Albert later in the day and stops there. This change has been made without an order of the Board. This it had no power to do without an order. Section 8 of the Act provides:

> "(8) Except as provided in the next succeeding section no licensed motor carrier shall abandon or discontinue any service comprised within its licence without an order of the Board which shall be granted only after a hearing upon such notice as the Board may direct."

The argument addressed to this Court as a justification for discontinuing the service might have been useful if addressed to the Board on an application made for an order to change the licence, but no such application has been made. If such an application had been made the Board would have had to consider the public interest as well as the Company's interest before coming to a conclusion. It is not to be expected that every mile operated shall be profitable if standing alone.

The rule nisi should be discharged.

Rule nisi charged

CONSOLIDATED REGULATIONS

Motor Carrier Act

SCHEDULE A

MOTOR CARRIER REGULATIONS

GENERAL RULES

1. Every application for a license shall be in the form prescribed by the Board.

2. Notice required to be published in the Royal Gazette shall be in the following form:
Take Notice that
has applied under the provisions of the Motor Carrier Act, for a license to operate a motor vehicle as a .....
(State whether Public Motor Bus or Public Motor Truck)
on the following routes:
The application will be heard by the Motor Carrier Board at
on the day of
A.D. 19 , at ten o'clock in the forenoon, local time.
Objections, if any, are to be filed with the Secretary of the Board at 55 Canterbury Street, Saint John, N. B., five days before the hearing.

.....
Applicant

.....
Address

3. (1) The said Notice shall be served on any competing common carrier and on the Mayor of any city or incorporated town to or through which the service is proposed to be operated.

(2) Subsection (1) does not apply to an application for a license to operate a public motor truck.

4. Publication and service of the said notice shall be proved at the hearing of the application by affidavit.

5. The Board shall meet in the City of Saint John on the third Thursday of each month at the hour of ten o'clock in the morning, local time, or at such other place and time as the Board may designate.

6. Objections to any application made under the Act must be in writing, and filed with the Secretary of the Board five days before the hearing.

PUBLIC MOTOR BUSES AND PUBLIC MOTOR TRUCKS

SIGNS

7. (1) Every Public Motor Truck shall have painted on each side thereof in letters of such size as to be easily read, and in two lines, the following information:

(a) Name of license holder.

(b) Address of license holder.

(2) The Board, at the time of issuing a license to operate a Public Motor Truck shall issue to the licensee a metal plate for each Public Motor Truck operated by him containing a distinguishing number preceded by the letters "P.C." in the case of a resident licensee and the letter "X" in the case of a non-resident licensee.

(3) Every licensee shall attach the metal plate referred to in subsection (2) to the lower right hand corner of the back of the vehicle to which it refers.

INSPECTION

8. (1) Every Public Motor Bus, and Public Motor Truck shall be maintained in a safe and sanitary condition at all times and shall be at all times subject to the inspection of the Board or the persons appointed for that purpose under section 6 of the Act.

(2) Every Public Motor Bus terminal shall be maintained in a neat, clean and sanitary condition, and shall be equipped with separate proper washrooms with toilets for men and women.

SPEEDOMETER

9. Every Public Motor Bus and Public Motor Truck shall be equipped with a standard speedometer which shall be maintained in good working order.

EXTRA TIRE

10. Every Public Motor Bus shall when leaving any terminal, be equipped with at least one extra serviceable tire.

TESTING BRAKES AND LIGHTS

11. The driver of every Public Motor Bus and Public Motor Truck shall test the brakes, lights and doors of such vehicle before operating the same on the public highway.

FIRE EXTINGUISHER

12. Every Public Motor Bus and Public Motor Truck shall be equipped with a liquid fire extinguisher of a design or type approved by the Board and such extinguisher shall be kept in satisfactory operative condition at all times.

EXHAUST

13. The exhaust pipe of every Public Motor Bus shall extend to the rear end of the vehicle and the floor shall be so constructed and maintained as to prevent exhaust gas from entering the vehicle.

DRIVERS

WORKING HOURS

14. (1) Every licensee shall, maintain an accurate record of the hours of labour of drivers, and each driver shall also keep an accurate record of his hours of labour.

(2) The Board may, when it considers such action necessary for the safety of the public, order a licensee to reduce the hours of labour of drivers, and in the event of refusal or failure by the licensee to comply with such order, may cancel the license of such licensee.

MISCONDUCT OR INCOMPETENCE OF DRIVER

15. Every motor carrier shall report to the Board the misconduct or the general failure of any driver employed by him to comply with the Motor Carrier Act or these rules, or the incompetency or unfitness of any such driver.

RETENTION OF INCOMPETENT DRIVER GROUND FOR REVOCATION OF CERTIFICATE

16. The continued employment or retention of incompetent or unfit persons as drivers by a motor carrier shall be sufficient ground for the suspension or revocation of the license issued to such motor carrier.

RULES RESPECTING PASSENGERS AND BAGGAGE

RIGHT OF PERSON TO BE TRANSPORTED

17. No driver of any Public Motor Bus shall refuse to carry any person offering himself at any regular stopping place for carriage and who tenders the regular fare to any regular stopping place on the routes of said bus or between the termini thereof, unless at the time of such offer the said bus is filled in accordance with the safety regulations, but the driver of a Public Motor Bus may refuse transportation to any person who is in an intoxicated or unfit condition, or conducting himself in a boisterous or disorderly manner, or is using profane or obscene language.

SEATING CAPACITY

18. Seating capacity in the case of a Public Motor Bus means a width of twenty inches per seat.

PASSENGERS NOT TO BE ALLOWED ON RUNNING BOARD, ETC.

19. No driver of a Public Motor Bus shall allow passengers to ride on the running boards, fenders or any other part of the vehicle other than the interior thereof, and in any event shall not carry more passengers than the regulated capacity of such motor vehicle.

RESTRICTIONS AS TO SEATING

20. No driver of a Public Motor Bus shall permit any passengers to occupy that portion of the vehicle forward of the back of the driver's seat when such Public Motor Bus is in motion.

BAGGAGE AND EXPRESS

21. No baggage or express matter shall be carried in any Public Motor Bus which would cause discomfort or inconvenience to passengers or interfere with the safety of operation, and no motor carrier or driver of a Public Motor Bus shall knowingly receive for transportation or allow to be carried in any such vehicle any explosive, inflammable substance or

other dangerous article, excepting gasoline or other fuel used for its own locomotive power which shall be carried only in the tank provided for the same.

OPERATING RULES

OPERATING BEFORE SCHEDULE TIME FORBIDDEN

22. No Public Motor Bus shall leave the place or point from which it is scheduled to start any trip until the time fixed for starting on such trip by the time-table and no such vehicle shall pass any intermediate stop on its route before the time fixed by the time-table.

STOPS FOR PASSENGERS

23. For the purpose of enbusing or debusing passengers every public motor bus shall be stopped at a point close to the curb or gutter on the right hand side of the public highway in the direction in which such vehicle is travelling.

NOTICE TO BE POSTED IN MOTOR VEHICLES

24. There shall be posted conspicuously in every passenger-carrying motor vehicle, a notice legibly printed or typewritten forbidding the smoking of anything other than cigarettes.

BILLS LADING

25. (1) Every operator of a Public Motor Truck, shall, before accepting for delivery at any certain point any article of merchandise or other freight, have properly filled out, signed and receipted, a proper bill of lading on the form or forms approved by the Board.

(2) Every operator of a Public Motor Truck shall, before operating the same, file with the Board, for its approval, a copy of the Bill or Bills of Lading used by such operator.

PROVINCIAL LICENSE NUMBER TO BE FILED WITH THE BOARD

26. While a license remains in force, the holder thereof shall file in the office of the Board as soon as he has received the same, and annually thereafter the Registration numbers of the motor vehicles being operated under such license.

INSURANCE REQUIREMENTS

27. The liability insurance policy required by clause (a) of subsection (6) of section 4 of the Motor Carrier Act, in respect of each public motor bus, shall insure against injury to persons and damage to property of any person recoverable against the motor carrier in the amounts following:

(a) PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

(i) not less than $5,000.00 against bodily injury to or the death of any one person, and not less than $10,000.00 against loss or damage resulting from bodily injury to or death of two or more persons in any one accident; and

(ii) not less than $1000.00 for damage to property (except property carried in or upon the motor vehicle) resulting from any one accident.

(b) PASSENGER LIABILITY AND PROPERTY DAMAGE INSURANCE:

(i) where the seating capacity is not more than 12 persons; not less than $10,000.00 against personal injury to one passenger and not less than $20,000.00 against personal injury to all passengers in any one accident; and not less than $5,000.00 against damage to property of all passengers (other than the assured) while being carried in or upon the Public Motor Bus;

(ii) where the seating capacity is 13 to 20 passengers inclusive, not less than $10,000.00 against personal injury to one passenger and not less than $30,000.00 against personal injury to all passengers in any one accident; and not less than $5,000.00 against damage to property of all passengers (other than the assured) while being carried in or upon the Public Motor Bus;

(iii) where the seating capacity is 21 to 30 passengers inclusive; not less than $10,000.00 against personal injury to one passenger, and not less than $40,000.00 against personal injuries to all passengers in any one accident; and not less than $5,000.00 against damage to property of all passengers (other than the assured) while being carried in or upon the Public Motor Bus;

(iv) where the seating capacity is 30 to 60 passengers inclusive; not less than $10,000.00 against personal injury to one passenger and not less than $50,000.00 against personal injury to all passengers in any one accident. Not less than $5,000.00 against damage to property of all passengers (other than the assured) while being carried in or upon the Public Motor Bus; and

(v) where the seating capacity over 60 passengers; not less than $10,000.00 against personal injury to one passenger, and not less than $60,000.00 against personal injury to all passengers in any one accident; and not less than $5,000.00 against damage to property of all passengers (other than the assured) while being carried in or upon the Public Motor Bus.

28. The liability insurance policy required by clause (a) of subsection (6) of section 4 of the Motor Carrier Act, in respect of each public motor truck, shall insure against injury to persons and damage to property of any person recoverable against the motor carrier in the amounts following:

(a) PUBLIC LIABILITY AND PROPERTY INSURANCE:

(i) not less than $5,000.00 against bodily injury to or the death of any one person and not less than $10,000.00 against loss or damage resulting from bodily injury to or death of two or more persons in any one accident; and

(ii) not less than $1,000.00 for damage to property (except property carried in or upon the motor vehicle) resulting from any one accident.

(b) INLAND TRANSPORTATION INSURANCE

Not less than $5,000.00 against loss of cargo by reason of fire, theft, accident or any other damage to said cargo.

29. No Motor Carrier shall operate a Public Motor Bus or Public Motor Truck until he has filed with the Board certified copies of Insurance Policies showing compliance by him with the insurance requirements applicable to him as set out in sections 27 and 28.

30. (1) Every operator of a Public Motor Truck shall file annually with the Board its tariff of freight rates, and such tariff or any item therein may be approved, disapproved or altered by the Board in its discretion.

(2) No person being the operator of a Public Motor Truck shall accept goods for carriage or carry goods at a rate of compensation other than the rate approved by the Board.

GENERAL

31. The provisions of the Motor Carrier Act shall not apply to a Public motor truck owned or used by or for a farmer, fisherman or lumberman which is normally used for one or more of the purposes set out in clause (e) of subsection (1) of section 11 of the Motor Carrier Act and which is used from time to time by such farmer, fisherman or lumberman or by a person hired by such farmer, fisherman or lumberman to haul geenral freight for compensation.

31A. The provisions of the Motor Carrier Act shall not apply to a Public motor truck, registered for a gross weight, including the weight of such truck and the weight of any load thereon, of less than 18,000 pounds.

32. These Regulations are in addition to the Safety Regulations of the Board.

33. These Regulations apply to operators of Public Motor Buses and Public Motor Trucks engaged in the carriage of freight and passengers in the Province.

MOTOR CARRIER BOARD — PUBLIC MOTOR BUS LICENSEES, 1955

Licensee	Address	Route	Mileage	Mileage Par'ling Railway	No. of Transports	No. of Passengers	Gross Revenue $	Cost of Operating Including Depreciation $	Fuel Consumption		No. of Accidents
									Gas Gallons	Oil Gallons	
Blackmore, Jed	West Bathurst, N. B.	Bathurst-Elm Tree, N. B.	13		1	78,212	10,856.25	11,224.59	7,800	52	
Bosse, Rosaire	St. Francis, N. B.	St. Francis-Edmundston	25	25	1	11,830	3,549.00	2,657.25	2,250	80	
Caraquet Transport	Caraquet, N. B.	Caraquet-Lr. Caraquet	7		2	75,500	10,214.84	9,629.10	4,757	72	
Dieppe-Fox Creek Bus Line Ltd.	98 Foundry St., Moncton, N. B.	Dieppe-Fox Creek-Dover Road, N. B.	6		1	214,183	22,890.69	28,867.05	18,908	186	
Doiron, Mrs. Mathilda	Rang St., Sauveur, N. B.	St. Sauveur-Bathurst, N. B.	25		1	3,000	1,754.95	1,498.00	900	16	
Dow, Neal	Canterbury, N. B.	Canterbury-Woodstock, N. B.	22		1	2,023	1,214.30	1,158.83	925	35	
Gloucester Motor Coach	Bathurst, N. B.	Bathurst-Tracadie	80	80	3	6,570	13,200.00	14,365.00	148,350	416	
Godfrey Bros.	Bransfield P. O., N. B.	Escuminac-Chatham, N. B.	37		1	5,643	4,776.10	5,183.46	283	47	
LeBlanc, A. & A.	Memramcook, N. B.	Memramcook-Moncton, N. B.	14		1	7,109	2,790.42	2,500.00	1,503	103	
LeBlanc, Aurele P.	Legerville, N. B.	St. Paul via St. Anthony-Moncton, N. B.	80		1	5,362	5,871.90	5,091.60	3,823	70	
Lamelin Bus Line Ltd.	101 Arago St., E. Quebec	Quebec Boundary-Edmundston, N. B.	12	12	1	6,286	6,145.62	5,469.24	2,668	137	
Melanson, Ovila	St. Anselme, N. B.	St. Anselme-Melanson Settlement and return by back roads	15½	4	1	1,695	475.00	No Return	280	12	
Memramcook Transport, Ltd.	Memramcook, N. B.	Memramcook, Gayton, Memramcook East, College Bridge, St. Joseph, Cormier Cove, Preden haut, Belliveau Village. Gautreau, Lr. Dover, Upper Dover, Dover to Moncton, N. B.	59	3	4	15,221	5,240.05	No Return	2,591	48	
North Shore Transport	West Bathurst, N. B.	Bathurst boundary to Carron Point-St. Mary's and return	2		1	161,295	15,158.00	14,932.74	12,306	104	

MOTOR CARRIER BOARD — PUBLIC MOTOR BUS LICENSEES, 1955

Licensee	Address	Route	Mileage	Mileage Par'ling Railway	No. of Trans-ports	No. of Passengers	Gross Revenue $	Cost of Operating Including Depreciation $	Fuel Consumption		No. of Acci-dents
									Gas Gallons	Oil Gallons	
		Bathurst boundary-SouthBathurst, West Bathurst to Vallee Lourdes	4		1	217,254	29,275.00	28,324.61	13,257	182	
North Shore Transportation (J. A. Coulombe)	175 Water St., Campbellton, N. B.	Campbellton to Dalhousie via Balmoral and Dundee	96		1	6,320	5,222.45	7,845.75	5,310	621	
Perry, Ira D.	149 Orange St., Saint John, N. B.	Latimer Lake-Saint John, N. B.	7		1	27,086	6,027.75	5,339.03	3,370	213	1
Redbank Bus (Chas. Wilson)	Redbank, N. B.	Newcastle-Somers Bridge	22		2	46,755	11,688.79	10,100.93	2,618	33	
Saint John Motor Line	58 King St.,	Saint John-Rothesay-Gondola Point-Saint John-Westfield-Woodman's Point, Public Landing	29	25	9	432,981	135,391.50	135,030.96	5,812	Fuel Oil 48,005 Oil 1,420	8
Seaside Motor Service	St. Martins, N. B.	St. Martins-Saint John, N. B.	30		4	70,729	19,295.68	18,950.28	14,476	259	
Sirois Bus Line	St. Basile, N. B.	St. Basile-Edmundston, N. B.	6	6	1	23,248	9,897.74	7,643.68	7,565	85	
S.M.T. (Eastern) Ltd.	58 King St., Saint John, N. B.	1. St. Stephen to Nova Scotia Border	1,673	800	63	1,571,551	1,367,536.33	1,382,421.55	176,994	Fuel Oil 252,407 Oil 9,766	137
		2. Saint John to Minto via Sussex									
		3. Saint John to Edmundston via River and Broad Roads									
		4. Newcastle to Loggieville via Chatham									
		5. Newcastle to Douglastown									

		6. St. Stephen to Fredericton									
		7. Moncton to Cape Tormentine via Shediac, Point du Chene, Baie Verte, Aboujagane, Shemogue and Port Elgin									
		8. Upper Aboujagane to Moncton									
		9. Moncton to Tracadie									
		10. Aulac to Port Elgin									
		11. Newcastle to Bathurst									
		12. Pennfield Corner to Black's Harbour									
		13. Saint John to Lorneville									
		14. Fredericton to Sussex via Narrows									
		15. Moncton to Lower Coverdale and Riverview Heights									
		16. Bathurst to Matapedia									
		17. Campbellton to St. Leonard									
		18. Moncton to Richibucto via Caissie Point, Cocagne and Buctouche Bay									
		19. Fredericton to Minto									
		20. Fredericton to Marysville									
		21. Fredericton-Newcastle									
		22. Fredericton to Millville									
		23. Fredericton to Oromocto									
Smythe Bros.	West Bathurst, N. B.	Bathurst-Big River	5		1	1,280	1,100.00	1,180.00	820	13	
		Bathurst-South Tetagouche	5		1	15,020	7,930.00	7,820.00	3,200	57	
The Grey Bus Line Co. Ltd.	Moncton, N. B.	Bathurst-Rough Waters	5		1	34,280	8,742.00	8,830.00	5,810	79	1
		Lewisville-Humphrey-Lakeburn-Highland View-Parkton-Scoudouc-Rabbit Brook	23.8		9	498,212	44,839.10	50,795.98	22,564	340	10
Underhill, B. H.	Blackville, N. B.	Blackville-Renous	4½	4½	1	3,685	921.25	908.44	538	10	
		Blackville-Newcastle	25	25	1	13,719	4,631.34	4,352.52	2,324	35	

Total Number of Public Motor Buses — 115
Total Number of Passengers Carried — 3,556,239
Total Mileage — 2,332.8
Total Mileage Paralleling Railway — 984½
Total Gross Revenue — $1,756,663.05

Total Cost of Operation Including Depreciation — $1,756,663.05
Total Fuel Consumption — Gal. Gas, 333,586; Gal. Oil, 4,191; Gal. Fuel Oil, 300,412

Total Number of Accidents — 137